No. 178

Supreme Court of the United States.

Filed Jan. 8, 1900

TURRETT STEAM SHIPPING COMPANY, LIMITED,

CLAIMANT OF STEAMSHIP "BARNSTABLE,"

Petitioner for Writ of Certiorari,

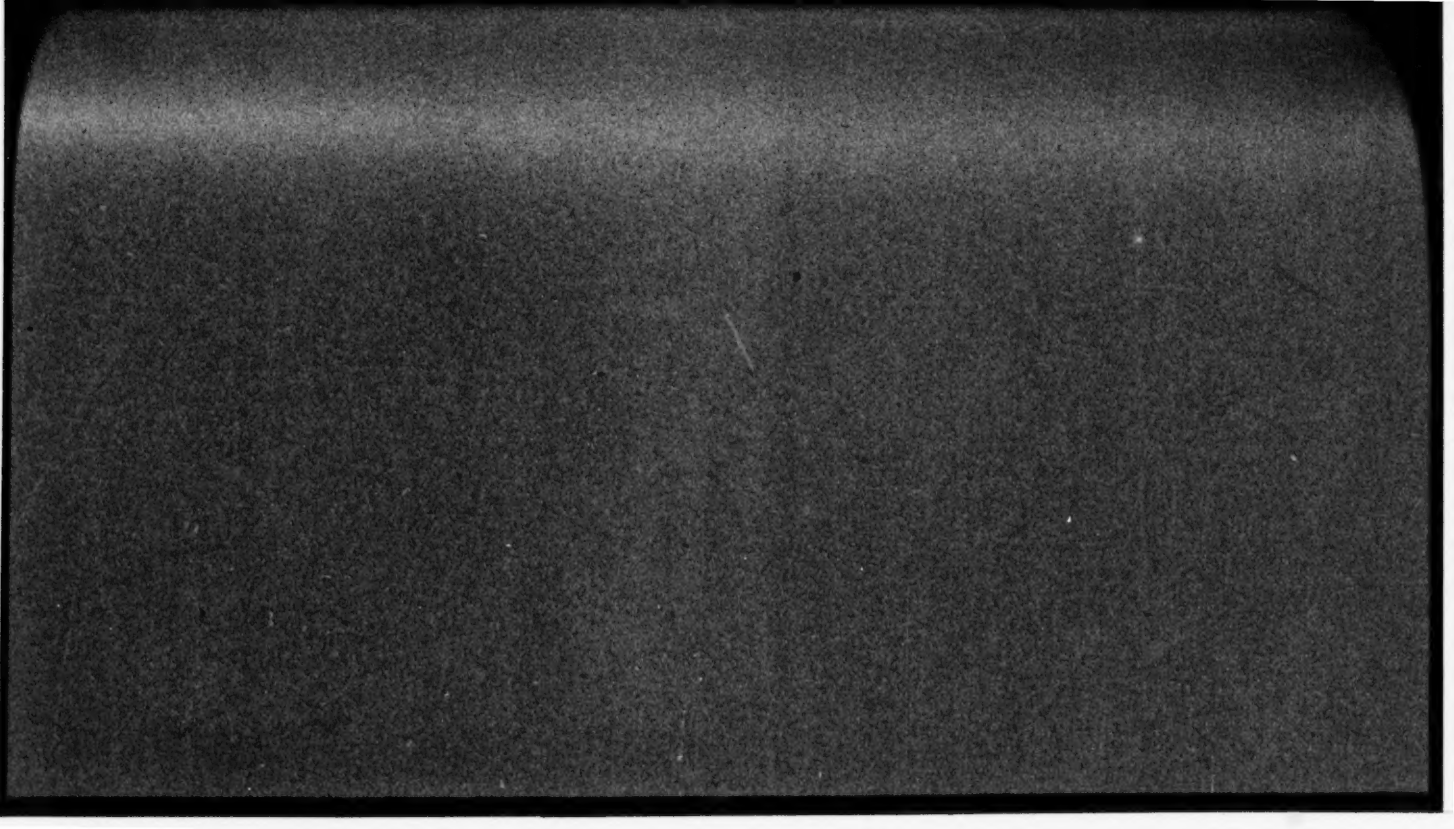
v.

THE BOSTON FRUIT COMPANY.

ANSWER TO PETITION.

CHAS. THEO. RUSSELL,
ARTHUR H. RUSSELL,
Counsel for Respondent.

BOSTON:
NATHAN SAWYER & SON, PRINTERS.
1900.



Supreme Court of the United States.

TURRETT STEAM SHIPPING COMPANY, LIMITED, CLAIMANT OF STEAMSHIP "BARNSTABLE," *Appellant, Petitioner*,

v.

A. S. HALL, ET AL., OWNERS OF SCHOONER "FORTUNA," AND PETITIONERS, AND

v.

THE BOSTON FRUIT COMPANY, *Respondent, Appellee.*

ANSWER OF THE BOSTON FRUIT COMPANY TO THE PETITION FOR CERTIORARI.

The Boston Fruit Company, the respondent to the petition for *certiorari*, respectfully answers and alleges as follows: —

First. It appears from the record submitted that Hall and others, as owners of the schooner "Fortuna," and certain intervening representatives of seamen on board, filed a libel in admiralty in the United States District Court for Massachusetts January 15, 1896, against the steamship "Barnstable," for running down and sinking the schooner off Cape Cod, about six o'clock P.M., January 13, 1896 (Record, pp. 2–4). The master of the steamship, "as agent of the owners," filed the claim for the steamship (Record, p. 5), and as master and such agent gave stipulation with sureties to respond (*Id.*). Upon April 8, 1896, upon petition and representation, the Turrett Steam Shipping Company as owner was substituted for the master as claimant;

and upon the same day the Boston Fruit Company, upon petition of the ship owner (Record, pp. 9–13), was summoned to answer under Admiralty Rule 59 as the charterer in possession and manager of the steamship. Answer to the merits was subsequently filed by the owner of the steamship (Record, pp. 22–25), and answer to the petition of the steamship owner was filed by the Boston Fruit Company (Record, pp. 25–27.) It was subsequently agreed by all parties in interest that the collision was caused wholly by the fault and neglect of those in charge of the navigation of the steamship, and the amount of damages was also agreed. (Agreement for damages, Record, p. 35, Stipulation regarding Facts, *Id.*, p. 37). Under these agreements it was admitted that libellants were entitled to a decree for the agreed damages against the steamship. The only question open for litigation was the petition of the steamship owner under Admiralty Rule 59 (Record, p. 9) that the Boston Fruit Company as charterer be declared primarily liable for the damage, under and by virtue of the contract of charter between the ship owner and said fruit company.

Second. The question of the liability of the Boston Fruit Company under Admiralty Rule 59 was argued upon agreed facts, with certain evidence regarding the making of the charter party and the usage in regard to its construction (Agreed Facts, Record, p. 37; Evidence, Record pp. 39–85). The charter party upon which the petitioner must rely to impose liability upon the Boston Fruit Company is printed in the Record (pp. 14–18). The case was fully and ably argued by the learned counsel for the ship owner in the United States District Court for Massachusetts (Judge BROWN, of Rhode Island, sitting), and it is apparent, from his elaborate opinion that the question involved was appreciated by the Court and the case fully considered. The opinion is in the Record (pp. 90–99), and is also reported.

The "Barnstable," 84 Fed. Rep. 895.

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Third. The Turrett Steam Shipping Company, not content with the decision dismissing its petition, exercised its right of appeal to the United States Circuit Court of Appeals upon assignments of error printed in the Record (pp. 87–90). The case was again argued at length in the Circuit Court of Appeals for the First Circuit before Judges PUTNAM, WEBB, and ALDRICH, and May 11, 1899, the decree below was unanimously affirmed with an opinion by Judge WEBB (Record, pp. 103, 104).

Also —

The "Barnstable," 94 Fed. Rep. 213.

The petitioner has therefore submitted the question of charterer's liability under the peculiar contract to two tribunals, has had the unanimous decision of four learned judges against its contention, and has exhausted every right of trial recognized in the Federal Practice.

Fourth. The appeal by the present petition is, to the discretion of this Court, to keep the litigation open; to leave unpaid an admittedly just debt to the owners of the sunken schooner, to the sailors injured and the representatives of sailors killed by the collision; and to hear argued, consider and decide what is at most a question of construction of an admittedly peculiar contract of charter between the petitioning ship owner and the respondent charterer.

Fifth. No general principle of law or of charter party construction is involved in this case. It is submitted that this Court has laid down the rules of construction and applied them in so many cases that argument and decision in this case will involve only labor to Court and counsel and expense and delay to litigants, with no commensurate advantage in declaring or

affirming any of the well-recognized rules of construction. This case involves no legal question of general importance or application not already settled.

See —

U. S. *v.* Shea, 152 U. S. 178.
Leary *v.* United States, 14 Wall. 607.
Reed *v.* United States, 11 Id. 591.
Marcardia *v.* Ins. Co., 8 Cranch. 39.
Hooe *v.* Groverman, 1 Id. 214.
Gracie *v.* Palmer, 8 Wheat. 605.

Sixth. The contention of the respondent, in regard to the legal meaning and construction of the contract in this case, is so fully and ably stated and considered in the opinions of the Courts below, especially in the elaborate opinion of Judge BROWN, in the United States District Court, that it does not seem to the respondent necessary to repeat at this stage of the litigation the argument submitted in its behalf.

Wherefore the Boston Fruit Company prays this Honorable Court to dismiss the petition for the writ of *certiorari* with costs.

BOSTON FRUIT COMPANY.

BY ITS PROCTORS

CHAS. THEO. RUSSELL.
ARTHUR H. RUSSELL.